

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

KIMBERLY WEBB . C.A. NO. H-17-3829  
VS. . HOUSTON, TEXAS  
CITY OF HUNTSVILLE POLICE . SEPTEMBER 2, 2020  
DEPARTMENT, et al . 10:00 A.M. to 10:49 A.M.

TRANSCRIPT of STATUS CONFERENCE  
BEFORE THE HONORABLE ALFRED H. BENNETT  
UNITED STATES DISTRICT JUDGE

APPEARANCES: (All participants appearing via Zoom or phone.)

FOR THE PLAINTIFF: RANDALL SCOTT POERSCHKE, JR  
Attorney at Law  
5111 Center Street  
Houston, Texas 77007

FOR THE DEFENDANTS: WILLIAM SCOTT HELFAND  
SEAN O. BRAUN  
Lewis Brisbois Bisgaard  
Smith LLP  
24 Greenway Plaza  
Suite 1400  
Houston, Texas 77046

OFFICIAL COURT REPORTER: KATHY L. METZGER  
U.S. Courthouse  
515 Rusk  
Room 8004  
Houston, Texas 77002  
713-250-5208

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1 P R O C E E D I N G S

2 *THE COURT:* This is Cause No. 4:17-cv-3829, Kimberly  
3 Webb versus City of Huntsville Police Department, et al.

4 Will counsel, please, enter an announcement for  
10:01:05 5 the record.

6 *MR. POERSCHKE:* My name is Scott Poerschke, attorney  
7 for Kimberly Webb.

8 *MR. HELFAND:* Good morning, Your Honor. Bill Helfand  
9 and Sean Braun for the City of Huntsville.

10:01:20 10 *THE COURT:* Very well. Counsel, the Court has before  
11 it plaintiff's opposed emergency motion to extend the  
12 scheduling order to depose witness and motion for leave to  
13 conduct discovery under Federal Rule of Civil Procedure 56(e),  
14 which is Document No. 54. The Court has the response from the  
10:01:43 15 defendant at Document No. 57.

16 Counsel for the plaintiff, were there any other  
17 documents that the Court needed to be aware of?

18 *MR. POERSCHKE:* No, Your Honor. Even though some of  
19 this does track back to the motion for new trial that I filed  
10:02:06 20 previously on this matter.

21 *THE COURT:* The Court is aware of those motions as  
22 well.

23 And counsel for the defense, were there any  
24 additional motions or documents that the Court needed to be  
10:02:17 25 aware of for the purposes of this hearing?

10:02:20 1           *MR. HELFAND:* No, Judge, I don't think so.

2           *THE COURT:* Very well. We'll turn our attention to  
3 the plaintiff, as it's the plaintiff's motion. Counsel,  
4 first -- all counsel, understand I've read your motion, I've  
10:02:33 5 read the response, and so I'm quite familiar with it and you do  
6 not need to rehash it. You can point out something specific.  
7 With that being said, I have a few questions.

8                       Counsel for the plaintiff, I note, as I noted in  
9 my August order, that most of the discovery that you are  
10:02:54 10 seeking to obtain now was previously available to the  
11 plaintiff. I understand the argument has been made that due to  
12 the, quote, "negligence," unquote, of prior defense -- I'm  
13 sorry, plaintiff's counsel, that that discovery was not  
14 obtained and you're seeking to obtain it now.

10:03:21 15                       Just as importantly, my understanding, and as to  
16 Chief Lunsford and Ms. Julie Connell (sic), that in regards to  
17 the depositions sought there, that these two witnesses were  
18 previously questioned under oath at the Texas Workforce  
19 Commission and at a TCOLE hearing. So, there is sworn  
10:03:43 20 testimony that has been obtained from these two individuals. I  
21 would like an explanation as to why that testimony could not be  
22 used for purposes of the summary judgment response.

23                       Now, my last point in regards to the motion for  
24 summary judgment filed by the defendants, I understand that  
10:04:14 25 they specifically cited Chief Lunsford and Ms. Connell with the

1 knowledge that the plaintiff had been terminated for  
2 insubordination, and those were the two individuals, for lack  
3 of a better phrase, that they hung their hat on when it came to  
4 their motion. And so with that being said, I'll give you the  
5 opportunity to point out anything specific that you want me to  
6 understand, as well as respond to the questions and concerns  
7 that I point out here this morning. Counsel?

8 *MR. POERSCHKE:* Yes. And my connection is breaking up  
9 a little bit, Your Honor. I can hear you fine. So if you  
10 cannot hear me, please, let me know. Okay?

11 *THE COURT:* I can hear you just fine.

12 *MR. POERSCHKE:* Okay. Good. Because I had to jump on  
13 to use my cell phone for some reason. Normally my iMac works,  
14 but I'm not sure what the issue is. It doesn't have the video  
15 on.

16 Okay. So to break down your question, Judge --  
17 those are good questions, and I already have the answers for  
18 them. With regards to the grounds, essentially, upon which  
19 discovery would be requested, I believe that there's two ways  
20 that you can go with this. The first way is based off of your  
21 prior order, Your Honor, and in regards to the diligence of  
22 Ms. Webb at which she attempted to get evidence of -- to refute  
23 the City's motion for summary judgment, you had indicated in  
24 your prior order, Your Honor, essentially that she was -- that  
25 she had diligently monitored the case. And I believe then that

10:05:55 1 that is -- those are facts that were interjected that allowed  
2 you then to reopen the case.

3 So, what I have attempted to do in my motion for  
4 discovery, essentially, is to highlight those actions upon  
10:06:10 5 which my client took to also provide diligence with regards to  
6 these deposition -- depositions that she requested at the time.  
7 I have highlighted some communications with regards to her  
8 interaction with her attorneys, and essentially there is an  
9 e-mail indicating that communications that Mr. Kennard had with  
10:06:35 10 Mr. -- is it Braun? I'm sorry.

11 *THE COURT:* Counsel --

12 *MR. POERSCHKE:* Am I pronouncing your name right,  
13 Sean?

14 *MR. BRAUN:* Yes, you are.

10:06:41 15 *THE COURT:* And, counsel, let me interrupt you.

16 *MR. POERSCHKE:* Yes.

17 *THE COURT:* Because I'm aware of that and I don't take  
18 issue with the fact --

19 *MR. POERSCHKE:* Okay.

10:06:47 20 *THE COURT:* -- that the plaintiff herself specifically  
21 directed her attorneys to take actions on her behalf and that  
22 they failed to do so. I have no issue with that, and I accept  
23 that as a fact based upon the record that is before me.

24 With that being said though, however, I've  
10:07:08 25 pointed out in my reading and understanding two specific

1 witnesses that would be germane to your response to the motion  
2 for summary judgment, specifically, again, Chief Lunsford and  
3 Ms. Connell. And as of right now, those are the two  
4 depositions I'm considering. But with that being said, it's my  
5 understanding that both of these witnesses have previously  
6 given sworn testimony on the very issues that I would assume  
7 you would raise in a deposition for purposes of compiling your  
8 response.

9               So, why is it that their prior sworn testimony is  
10 not suitable for incorporation into your response? Why would a  
11 deposition be necessary to capture -- and I hadn't seen the  
12 testimony, admittedly -- potentially capture the same testimony  
13 and same sworn statements?

14               *MR. POERSCHKE:* Okay. Yes, Your Honor. The short  
15 answer on that is that there are issues with regards to my  
16 client's termination that are not contained in that F-5 hearing  
17 or to cite, Your Honor. Now, to backtrack --

18               *THE COURT:* There were two hearings, Texas Workforce  
19 and TCOLE. Are you saying that the information that you are  
20 seeking is not contained in either of those instances?

21               *MR. POERSCHKE:* Yes, Your Honor. Because essentially  
22 you have to remember that the City's legitimate reason for  
23 terminating my client involved two, two points. They said that  
24 she was insubordinate and they said that she was essentially  
25 untruthful. Now, the insubordination arises with her failure

10:09:04 1 to follow procedures and her alleged orders to participate in  
2 the investigation. That was covered extensively in the TWC  
3 hearing. It was covered extensively in the F-5 hearing.

4 The discovery that I'm seeking pays particular  
10:09:19 5 attention and emphasis on the untruthfulness finding. Now, the  
6 untruthfulness finding was utilized to prohibit the D.A. of  
7 Montgomery County to prohibit Webb from testifying in court,  
8 essentially indicating that she had to be placed on a Brady  
9 list.

10:09:36 10 Webb was also found to be untruthful in a  
11 polygraph examination where she was asked questions directly  
12 about her -- the sexual assault that she experienced by  
13 Sergeant Scott. As a result of that polygraph examination,  
14 Webb was found to have been untruthful in holding that Scott  
10:09:58 15 basically essentially sexually assaulted her.

16 But you can look and take a look at our Exhibit 7  
17 attached to our motion for -- to reopen the case. That is a  
18 document written by Chief Lunsford that sort of indicates that  
19 although you contend that Scott's conduct was motivated by or  
10:10:18 20 somehow related to your gender, no evidence substantiated this  
21 contention. Therefore, on City's Exhibit No. 6, that's  
22 Document 23-6, the chief indicated -- and this is in Ms. Webb's  
23 termination letter -- that, therefore, based upon all the  
24 information available at that time, an allegation you had been  
10:10:41 25 untruthful during the investigation appeared valid. Then the

10:10:46 1 chief indicates that you did not submit to that examination  
2 regarding the irreconcilable statements between you and  
3 Sergeant Scott and the results of your examination showed  
4 deception indicated.

10:10:59 5 So, therefore, in order to combat the City's  
6 legitimate reason regarding the untruthfulness finding, that  
7 gets into the issue with regards to Sergeant Scott. And  
8 essentially the City's reason for finding Ms. Webb untruthful  
9 was related to her untruthfulness and indicating to Chief  
10:11:20 10 Lunsford and Mrs. O'Connell that she believed that Sergeant  
11 Scott's conduct against her was motivated by some sort of  
12 sexual predatory -- I think that the chief used the term  
13 "gender issues."

14 And in that investigation, which involved --  
10:11:37 15 contemporaneously with Webb's investigation, Sergeant Scott was  
16 investigated. Attached to our motion to reopen the case, we  
17 have, you know, witness statements, essentially, recordings  
18 that were made during the investigatory process with another  
19 officer by the name of Ryann Kaaa, indicated to Ms. O'Connell  
10:12:03 20 that -- that Scott, the sergeant, had attacked one of the  
21 witnesses I requested to depose. Her name was Stacey. That  
22 there was another witness Stephanie, that's another witness I  
23 requested to depose, sent genitalia photos -- or Scott sent  
24 genitalia photos to her.

10:12:25 25 Stacey also indicated -- or Ryann Kaaa indicated



10:12:29 1 that Stacey had made -- that they -- Scott had propositioned  
2 him for sexual intercourse.

3 So, it has to do -- it's not really a very  
4 difficult issue. It's just that it has to do with that Scott  
10:12:45 5 was a sexual predator and we can show that Scott did have  
6 sexual predator and gender issues with regards to women, then  
7 it's really not a stretch to say then that Webb was not  
8 untruthful in stating that Scott's conduct was motivated by  
9 gender.

10:13:03 10 So as a job -- you know, as a plaintiff's  
11 attorney in employment law cases, it's my job to cast doubt or  
12 to show how the City's legitimate reasons for terminating her,  
13 especially with regards to the untruthfulness finding, which I  
14 would say is the more important finding, because that  
10:13:22 15 untruthfulness finding directly led to a letter by the  
16 Montgomery County District Clerk -- the District Attorney that  
17 indicated that, you know, Ms. Webb could not testify in court  
18 anymore because of the untruthfulness finding against her. And  
19 then that relates directly back to the allegation that my  
10:13:43 20 client was found untruthful about, and that has to do with the  
21 gender issues that Scott's conduct was motivated by gender.

22 So, that is something that was not fully  
23 developed. It wasn't fleshed out at the F-5 hearing. My  
24 client may have testified to it to some extent, but in terms of  
10:14:08 25 Bill Helfand's sort of -- the thrust that he had at the F-5

10:14:14 1 hearing was focused on the insubordination, not on this -- the  
2 untruthfulness charge as it relates to Mr. Scott's conduct.  
3 And that's why I am requesting --

4 *THE COURT:* Counsel, let me interrupt you because --

10:14:27 5 *MR. POERSCHKE:* Yes, Your Honor.

6 *THE COURT:* -- I appreciate you focusing on those two  
7 issues. And you've also outlined five other potential  
8 witnesses, and I can frankly tell you that in regards to most  
9 of them, I didn't see a good cause standard being met in  
10:14:50 10 regards to those. Specifically, Mr. Helfand, who's an attorney  
11 in this case, I think you outlined that he had a conversation  
12 with a potential witness. You've not sought the deposition of  
13 the witness he had the conversation with. But to the extent  
14 that he had a conversation with a witness, that's what lawyers  
10:15:15 15 do. And that does not create or transform him into a witness  
16 based upon what has been outlined.

17 You also outlined -- or mentioned Assistant Chief  
18 Slavin, and I believe it was Senior Officer Davis. And based  
19 upon the reason for the termination, I'm not sure what Slavin  
10:15:40 20 or Davis could speak to as to insubordination or  
21 untruthfulness. And then, finally, there was Stacey Smith and  
22 Stephanie Thompson; and I did not see a sufficiently  
23 articulated reason for those depositions.

24 So, again, the Court's inquiry was somewhat  
10:16:01 25 limited to Lunsford and Connell as to potential depositions to

1 follow up with. As I understand it, your point is that in  
2 regards to the Texas Workforce examinations and the TCOLE  
3 examinations as to Lunsford and Connell, that while they did go  
4 into the insubordination, they did not go into untruthfulness,  
5 which is another component that you want to test for purposes  
6 of your response to the motion for summary judgment. Did I sum  
7 that up correctly?

8 *MR. POERSCHKE:* That's correct, Your Honor. And if  
9 you would like for me, I can explain. Slavin and Davis were  
10 individuals that may have reported issues involving Scott to  
11 the chief. So that would have placed the chief on notice that  
12 Scott had -- or the chief had had notice prior to the issue of  
13 Ms. Webb coming in and making her complaint that the chief knew  
14 about --

15 *THE COURT:* Well, to the extent that you -- well, to  
16 the extent that you are permitted to take the deposition of  
17 Chief Lunsford, why wouldn't that be a preference of inquiry  
18 with him as opposed to having these other two witnesses come in  
19 and say that?

20 *MR. POERSCHKE:* Well, it would, Your Honor, and I  
21 guess, it would depend upon what Chief Lunsford would testify  
22 to. If he denied -- if he denied having conversations with  
23 Slavin and Davis about these issues, then I guess then that  
24 would then open the door up --

25 *THE COURT:* Have you had -- have you had conversations

10:17:39 1 with Slavin and Davis?

2 *MR. POERSCHKE:* No, I have not, Your Honor. But my  
3 client --

4 *THE COURT:* So as to any potential conversation  
10:17:47 5 between, for instance, Slavin and Lunsford, you have no  
6 personal knowledge based upon a conversation with either Slavin  
7 or Lunsford that a conversation has taken place; is that  
8 correct?

9 *MR. POERSCHKE:* Well, I don't have any personal  
10:18:00 10 knowledge, but my client's husband spoke with Chief Slavin  
11 about the issues that she experienced with Scott. So my  
12 client's husband can testify to that, if need be, Your Honor.

13 *THE COURT:* Okay.

14 *MR. POERSCHKE:* And then with regards to Davis, my  
10:18:17 15 client can testify that she had a conversation with Davis  
16 about -- Davis and then Davis indicated something to the effect  
17 that he had reported these issues to the chief before. So, I  
18 have -- my client can testify to that, Your Honor.

19 *THE COURT:* So if Chief Lunsford testifies one way,  
10:18:39 20 you would be able to submit sworn testimony from someone in an  
21 instance that it sounds like it would be based upon hearsay,  
22 that this conversation took place?

23 *MR. POERSCHKE:* Well, again, I mean, my client would  
24 say -- well --

10:18:56 25 *THE COURT:* She had a conversation. It would be a

1 sworn statement based upon hearsay?

2 *MR. POERSCHKE:* Right. Right.

3 *THE COURT:* Okay.

4 *MR. POERSCHKE:* I don't know -- it's not a -- my  
5 client and my client's husband were not involved in the  
6 conversation that Slavin had with the chief or that Davis may  
7 have had with the chief, that's correct, Your Honor.

8 *THE COURT:* Okay. Thank you, counsel.

9 Now, let me turn my attention to the defense.

10 Counsel, as you've heard some of the concerns that I originally  
11 expressed to plaintiff's counsel regarding the existence of the  
12 Texas Workforce examination as well as TCOLE, but now here in  
13 federal district court, you're seeking a dismissal of the  
14 plaintiff's claims against your clients. To that extent, to  
15 the extent you're asking me -- Mr. Helfand, you've been before  
16 me over numerous years now and you know I don't mind shutting  
17 the door of the courthouse when the facts and the law calls for  
18 it. But you have probably also heard me use the phrase, "I  
19 want everyone to have all the cards available before that  
20 happens."

21 To the extent that plaintiff is now before me and  
22 complaining that she does not have all her cards, specifically  
23 due to the, quote, "negligence," unquote, of her prior  
24 attorneys and that she would have been able to incorporate into  
25 her response the potential deposition testimony of Chief

10:20:36 1 Lunsford and Ms. Connell -- and I'm focused on those two,  
2 because it seems those were the two decision makers in her  
3 termination based upon insubordination and being untruthful.  
4 The simple fact that her prior counsel failed to take these  
10:20:56 5 depositions when he should have and now you're asking me to  
6 boot her out of court without having those two particular  
7 cards, how does the Court reconcile these two issues as we move  
8 forward?

9           *MR. HELFAND:* Yes, Your Honor. Well, let me say, we  
10 start with the fact that Your Honor's order did not authorize  
11 new discovery. In fact, Your Honor precluded that relief based  
12 upon what I would submit is a well-reasoned decision. And  
13 while I'm not here to apologize for Ms. Webb's prior counsel,  
14 I'm not sure that they need an apology, Judge. I certainly  
10:21:45 15 respect the Court as both an experienced litigator and now a  
16 very experienced judge, in believing that there may have been  
17 negligence involved here, but I certainly understand for  
18 reasons I'll get into in just a moment why Ms. Webb's counsel  
19 chose not to ask questions of the two people involved in the  
10:22:08 20 decision, as the Court has pointed out correctly, to fire  
21 Ms. Webb. That is Ms. O'Connell, the human resources director  
22 for the city, and the chief of police, Chief Lunsford.

23           We all know as practitioners, that the more times  
24 we ask questions, the more risk we run of getting equivocal  
10:22:28 25 answers or the opportunity to repair damaging testimony that a

1 witness may perceive from prior events.

2 And so, again, I have my own opinions of  
3 Ms. Webb's counsel and their conduct in this case specifically,  
4 but I certainly understand, having -- and I think that this was  
5 implicit in what Your Honor said, but I want to be sure the  
6 record is clear, not just that Ms. O'Connell and Chief Lunsford  
7 testified before the Workforce Commission under oath and the  
8 SOAH judge in the TCOLE hearing, but that they were literally  
9 cross-examined by Ms. Webb, through her counsel, at both of  
10 those hearings. And Ms. Webb was present at both of those  
11 hearings and therefore able to arm her counsel with information  
12 that they might need to do their cross-examination.

13 You know where we are, Judge, respectfully is,  
14 we're just beating a dead horse here, as the decision of the  
15 Workforce Commission shows, as the decision of the SOAH judge  
16 affirmed by the District Court in Austin shows, that Ms. Webb  
17 was fired for dishonesty and insubordination. And I certainly  
18 understand Mr. Poerschke's difficulty in kind of synthesizing  
19 all of this coming to this event late. But some of the things  
20 he's told the Court are just inaccurate. And I want to clarify  
21 those. But before I do, I want to point out that, again, the  
22 answer to the Court's first question is, if we stick to the  
23 order that you entered, Judge, then what Ms. Webb was  
24 authorized to do was submit into the summary judgment record  
25 evidence she claims she already had. She told Your Honor

10:24:12 1 that -- she gave Your Honor some choices. One was to set aside  
2 the summary judgment, reopen the case and allow her to do some  
3 of the things she's proposing to do now, like take a bunch of  
4 depositions.

10:24:24 5 The Court rejected that proposal, because Rule 59  
6 did not authorize it under these circumstances. Rather what  
7 the Court authorized was a limited alteration to the summary  
8 judgment record, and it was -- and I understand -- and I  
9 pointed this out to Mr. Poerschke when after we got the order,  
10:24:41 10 Mr. Poerschke immediately wrote me and said, "Would you agree  
11 we can now do depositions?" I said, "No." The Court set  
12 September 3rd after an August order, to my understanding,  
13 because the Court observed in its order that Mr. Poerschke had  
14 said the plaintiff is already in possession of the evidence  
10:24:58 15 that she needs. She just needs you to reopen the record, let  
16 her put this evidence in, and then the Court would rule again  
17 on the summary judgment based upon that evidence.

18 So, the door -- the Court opened the door  
19 slightly, and I think appropriately under the rules, and told  
10:25:17 20 the plaintiff you can slip that letter in the little slot here.  
21 And what the plaintiff is trying to do is knock the door open  
22 and say, I'm starting over. And so that isn't what the Court  
23 authorized, first, and nor should it be, Judge, because  
24 Mr. Poerschke's comments demonstrate the complete mistake that  
10:25:37 25 the plaintiff has had in this case from day one and apparently



1 still has today. And some of the things Mr. Poerschke said are  
2 just inaccurate. And, you know, I understand, because he's  
3 trying to synthesize a lot of information. I don't think it's  
4 intentional, but I don't want the Court to go away with less  
5 than a thorough understanding. It's all, by the way, laid out  
6 in the summary judgment.

7 Ms. Webb was the victim of a leg sweep, which  
8 apparently was some kind of horseplay that several people in  
9 the Huntsville Police Department thought was okay. The chief  
10 obviously did not. But there's a video recording of Ms. Webb  
11 standing in a room and then Sergeant Scott walks up behind her  
12 and he sweeps her leg and she falls. That's what happened.  
13 She made a complaint about that, and the City was investigating  
14 that.

15 I think the most -- in my own personal opinion,  
16 the most negligent thing her lawyers at the time did was to try  
17 to turn that into a gender discrimination claim. And they  
18 wrote a letter saying, She's complaining that that was  
19 motivated by gender, that leg sweep. Okay. I don't see how  
20 that works, but okay. And you are now on notice that if you  
21 fire her or take any action against her -- and the reason they  
22 needed to do this, Judge, by the way, is because the evidence  
23 ultimately played out, and Ms. Webb even admitted, that she was  
24 involved in some of the horseplay as well. But what her  
25 lawyers at the time wrote was, If you take any action against

1 her, now you're retaliating against her for making a gender  
2 discrimination claim.

3 Ms. Webb never provided any evidence that  
4 Sergeant Scott was motivated to sweep her leg by her gender.  
5 And, in fact, there was plenty of evidence that Sergeant Scott  
6 was doing such stupid and inappropriate acts with both men and  
7 women. And so why Ms. Webb's lawyers wrote that letter, I'll  
8 never know. But if there was negligence in their conduct, I  
9 think that that's probably where it lies. I think that they  
10 thought they were going to protect Ms. Webb from some  
11 discipline of her own by writing that letter.

12 Instead what happened was, the City then had to  
13 take the leg sweep incident and now investigate an allegation  
14 of somehow gender based conduct. And here's, Judge, where the  
15 whole thing gets off track, and I'm sorry that Mr. Poerschke  
16 has bought into this, which is he just told you all the things  
17 he wants to do to prove that Sergeant Scott -- he's no longer a  
18 sergeant. He was actually demoted because of this leg sweep  
19 incident -- that Sergeant Scott is a sexual predator. What in  
20 the world has that got to do with why this lady was fired? She  
21 wasn't fired for claiming he was a sexual predator. She wasn't  
22 fired for allegations of what he did to other people as it  
23 relates to sexual conduct. Ms. Webb was fired -- and Your  
24 Honor has this in the record. And I hope that you can take it  
25 from me, Judge, but if you can't take it from me, take it from

1 another judge, the administrative law judge, as affirmed by the  
2 Austin District Court, wisely did what I think this Court did  
3 in ruling on the summary judgment, just set all of that aside,  
4 because that's not why she was fired. And what that  
5 administrative law judge found, and this is where Mr. Poerschke  
6 is incorrect, the administrative law judge made a finding of  
7 both insubordination and dishonesty.

8               Now, the dishonesty is not the untruthfulness in  
9 the polygraph examination. It was -- it was certainly  
10 reinforced by the finding by the polygraph examiner that  
11 Ms. Webb was untruthful. But in the Workforce Commission  
12 hearing and in the TCOLE hearing, both Ms. O'Connell and Chief  
13 Lunsford testified that they independently determined that  
14 Ms. Webb was lying to them in the investigation. And what was  
15 she lying about? She was lying about the nature of her  
16 relationship with then Sergeant Webb. The two of them had had  
17 a -- what is often called sexting, s-e-x-t-i-n-g, relationship,  
18 to which they both admitted. But Ms. Webb claimed that she did  
19 not instigate that relationship and that she did not find it to  
20 be consensual.

21               Sergeant Scott and Ms. Webb both took a polygraph  
22 examination on that issue, not whether Sergeant Scott is a  
23 sexual predator and not whether Ms. Webb's leg sweep was sexual  
24 in nature, but who started the relationship and whether it was  
25 consensual. And the polygraph examiner said Ms. Webb was

1 dishonest about that and that Sergeant Scott was honest about  
2 that.

3 Now, again, however, both the Workforce  
4 Commission testimony and the TCOLE hearing testimony  
5 demonstrate that Ms. O'Connell and sergeant -- excuse me, Chief  
6 Lunsford both determined in their mind that Ms. Webb was lying  
7 about that before the polygraph examination. The  
8 insubordination, Mr. Poerschke is partially right, not only  
9 relates to Ms. Webb's conduct in refusing direct orders from  
10 the chief to participate in the investigation, but also  
11 Ms. Webb's tape-recorded, I guess the colloquial term would be  
12 smart-mouthing the chief during his discussion with Ms. Webb.  
13 And, again, Your Honor is not without a judicial determination  
14 in this regard. The ALJ actually cites the language that  
15 Ms. Webb used in, again, if the Court will allow me, smarting  
16 off to the chief in a conversation where the chief is trying to  
17 have a professional discussion with one of his subordinates.  
18 So, again, both Ms. O'Connell and the chief were present for  
19 that.

20 Ms. O'Connell said that, as the human resources  
21 director, that such conduct is not tolerated within the City  
22 and would always be the subject of adverse employment action  
23 and often would be the subject of separation. The chief said  
24 that based upon the paramilitary organization of a police  
25 department, which the Fifth Circuit and this Court have

10:32:05 1 recognized, that adherence to order and adherence to rank are  
2 paramount of importance and that such insubordination is its  
3 own basis for separation.

4 So, the lady was fired for two reasons, Judge.

10:32:18 5 And both the chief and Ms. O'Connell have been, not just  
6 testified, but cross-examined by Ms. Webb twice on these  
7 issues. The whole question of whether Sergeant Scott --

8 *THE COURT:* Excuse me, Mr. Helfand, and let me stop  
9 you there --

10:32:35 10 *MR. HELFAND:* Okay.

11 *THE COURT:* -- because I think you're about to go to a  
12 point that I want specific emphasis on. I have a more basic  
13 issue, and I appreciate the overview, again, about the facts  
14 and as well from plaintiff's counsel. But I'm facing a more  
10:32:56 15 fundamental question, and that is, in regards to receiving into  
16 the record an amended response to the motion for summary  
17 judgment that would put the Court in a position to rule on the  
18 motion for summary judgment filed by the defendant, I'll have a  
19 fully briefed, fully loaded motion for summary judgment and by  
10:33:28 20 the same token, a fully briefed, fully loaded response to that  
21 motion for summary judgment. I'm dealing with the fundamental  
22 issue of fairness of having a complete factual record before  
23 the Court. And I have been alerted by the plaintiffs -- the  
24 plaintiff, I'm sorry, that it cannot be a fully loaded response  
10:33:57 25 without the testimony of certain witnesses. And I've limited

1 my -- as you can see, to Chief Lunsford -- and I apologize, I  
2 said Connell earlier, and it's O'Connell -- and to O'Connell,  
3 those two particular witnesses.

4 And from your perspective as you go to this next  
5 little area that you're about to, I assume, go into, is it fair  
6 to say -- because admittedly, those two depositions in this  
7 matter have not been taken. Can the Court go forward and view  
8 the response of the plaintiff as fully loaded without having  
9 these two key factual witnesses under oath via deposition in  
10 this case for purposes of the response and consider itself  
11 fully informed on the facts before it issues a ruling on your  
12 motion for summary judgment? Do you understand what I'm  
13 saying?

14 *MR. HELFAND:* I most certainly do, Your Honor. And,  
15 again, I would reference the Court's conclusion to your order,  
16 Docket No. 52, in which the Court granted a 60(b) motion but  
17 denied a Rule 59(e) motion. Now, having said that, this case  
18 is still before you, Judge. And obviously I know from my  
19 experience with you, that you want to get it right. So, I  
20 think the construct that the Court has created at the moment  
21 would not permit that, but understanding today -- this is  
22 obviously the benefit of the opportunity to interact with the  
23 Court directly -- understanding today what the Court thinks is  
24 necessary, I certainly understand where you're coming from,  
25 Judge, in terms of your questions.

10:35:51 1 So let me offer this. I will say this.  
2 Ordinarily my answer would be, Well, gosh, that's patently  
3 unfair. The plaintiff gets to see my motion for summary  
4 judgment and then start taking depositions? Okay. I mean, on  
10:36:07 5 a just that broad of a question, I would say, no, that's not  
6 fair.

7 Let me offer this, Judge, if it helps move things  
8 along. Because this case -- again, these folks have testified  
9 so many times. They've been cross-examined so many times.  
10:36:22 10 They're so clearly on the record of what happened here, that  
11 I'm okay with it. It suits the Court's purposes. Because I  
12 want this to be affirmed on appeal. I think it will be as it  
13 stands right now, but I want it to be affirmed on appeal. So  
14 if it suits the Court's purposes, I'm okay with a two-hour  
10:36:41 15 deposition of each of these people that is focused on the  
16 question of the reason that they fired this lady.

17 What I'm worried about, Judge, is -- because I'm  
18 getting it from my client, is after the Court entered its order  
19 in August, Ms. Webb is out talking to employees of the City,  
10:36:58 20 saying the Court has determined that her summary judgment was  
21 not appropriate, that her case is back on the docket and that  
22 she needs to collect evidence about what a bad guy Mr. Scott  
23 is. And I don't want this being used to -- because it's a  
24 small town, Judge, and he's still a cop up there. I don't want  
10:37:18 25 this to be used as Ms. Webb's revenge of Sergeant Scott.

10:37:22 1           *THE COURT:* Well, let me interrupt you there, because  
2 I think you've kind of hit the nail on the head, as far as my  
3 solution goes. And Mr. Helfand and -- counsel for the  
4 plaintiff, how do you pronounce your last name?

10:37:34 5           *MR. POERSCHKE:* It's Poerschke. Like a purse and a  
6 key, Your Honor.

7           *THE COURT:* Poerschke. Mr. Poerschke, not only am I  
8 dealing with an issue of the plaintiff's relief in its motion,  
9 but three lawyers talking. There's another underlying issue  
10:37:58 10 here with the way that the response has been filed as well as  
11 other allegations in this case file, regarding previous  
12 counsel. And as it is now set up, there is a potential that  
13 some lawyer may have to call his or her carrier and that can  
14 somewhat be fixed right now in allowing some of the issues that  
10:38:38 15 were not tended to earlier to be legally tendered to now.

16 Because then the Court will have before it a full and complete  
17 record and there could not be a decision made on an incomplete  
18 record which could then later be used against another counsel.  
19 And sometimes when people fall under the bus, they want to be  
10:39:07 20 under the bus. Sometimes people fall under the bus  
21 inadvertently. And if you can reach a hand down and keep  
22 someone from being under the bus professionally, I would hope  
23 that we would all want to do that because, you know, but for  
24 the grace go I.

10:39:23 25           And so with that being said, I think Mr. Helfand



10:39:27 1 has laid out and addressed the concerns that the Court has and  
2 I think most specifically, Mr. Poerschke, it gives you what you  
3 need for your response based upon my understanding of this case  
4 file and what has been asserted thus far. What the Court is  
10:39:47 5 going to allow, you may take a two-hour deposition of Chief  
6 Lunsford and a two-hour deposition of Ms. O'Connell. It is to  
7 be limited to the reasons that the plaintiff was terminated and  
8 any prior sworn testimony that was given at the Workforce or  
9 TCOLE hearing in regards to testing their credibility.

10:40:26 10 I don't want it to be a rehash of the Workforce  
11 or the TCOLE, because I already have -- you have access to  
12 that. But if you think -- what I'm going at, if you think they  
13 made a specific misrepresentation at either of those hearings  
14 and you have proof of it, you can ask them about that such that  
10:40:48 15 I can then determine, okay, this person has previously made a  
16 misrepresentation under oath and you're bringing that to me for  
17 purposes of their credibility only.

18 But the purpose of the deposition will be to  
19 inquire as to why the plaintiff was terminated, because that is  
10:41:08 20 the case that I have and that's the evidence that I will give  
21 you access to. Once you have taken these two depositions, then  
22 you may incorporate whatever testimony, as can the defendant,  
23 in a reply. You can incorporate that into an amended response.  
24 And then the Court believes it will be in a position to rule on  
10:41:40 25 the motion for summary judgment.

10:41:44 1 Mr. Poerschke, is that clear?

2 MR. POERSCHKE: Yes, Your Honor, just as long as that  
3 what I've stated previously about the untruthfulness finding  
4 and how that untruthfulness finding is related to --

10:41:58 5 THE COURT: The termination. I think Mr. Helfand has  
6 put in writing and has told me here today, that the reason for  
7 the termination was insubordination and dishonesty. So both of  
8 those can be the subject of the deposition, because those were  
9 the reasons for the termination.

10:42:17 10 MR. POERSCHKE: Right. And then with regards to the  
11 untruthfulness finding, that relates back to her deceptive  
12 polygraph examination of which questions were asked of her  
13 about Scott and her relationship with Scott and so that then --  
14 those issues about Scott then factor into the City's legitimate  
10:42:38 15 reason for terminating her under that untruthfulness category.

16 THE COURT: I'm not going to give you a deposition  
17 outline. I'm giving you a deposition time limit and how you  
18 inquire --

19 MR. POERSCHKE: Right.

10:42:49 20 THE COURT: -- the reasons for her termination  
21 regarding insubordination and dishonesty is on you. But your  
22 clock is ticking. You've got two hours to do it for each  
23 witness.

24 MR. POERSCHKE: Yes, Your Honor.

10:43:03 25 THE COURT: All right. Now, anything unclear about

10:43:08 1 where I stand on this, Mr. Helfand?

2           *MR. HELFAND:* No, Judge, I appreciate that. Can we  
3 just have a deadline? I'm happy to present these people very  
4 promptly. I'd like to just kind of keep this thing moving, if  
10:43:19 5 we can.

6           *THE COURT:* Right, and so would I. Well, let me  
7 address one other issue before I get to that. Mr. Helfand, and  
8 you are correct that under the August ruling, this was not  
9 anticipated. But once I got the emergency motion, the issue  
10:43:36 10 was more framed for me and so I wanted to make sure -- like  
11 you, I'm considering the potential rulings in New Orleans, and  
12 I wanted to make sure all the t's were crossed and i's were  
13 dotted as to what the plaintiff had available for purposes of  
14 responding to your motion for summary judgment.

10:43:59 15           *MR. HELFAND:* I understand, Judge, and I guess to your  
16 benefit, you're the only one who's not constrained by your  
17 rulings. So to the extent that you find it appropriate to make  
18 a change, we understand your decision to do so.

19           *THE COURT:* Right. And the final point that you  
10:44:13 20 make -- and believe me, I very much considered the fairness to  
21 your client. You turned your cards over on the table and now  
22 the plaintiff is going to get the opportunity to go out and  
23 take a deposition having seen that and address specifically  
24 some of the issues you raised. I understand the box that that  
10:44:32 25 puts you in and -- but I don't believe fundamentally that it's

10:44:41 1 going to alter your legal position based upon the way that  
2 you've framed this record. And so if we can cross a t and dot  
3 an i by doing this, I think it's the appropriate thing to do.  
4 And I think also by only taking two of the witnesses as opposed  
10:45:04 5 to the seven and putting a time limit on it, that that's some  
6 respect to the potential cost that your client is going to  
7 incur as a result of this. So, by way of your explanation to  
8 your client, you can tell them that was my thinking. And  
9 believe me, I had in mind the potential impact on your side of  
10:45:26 10 this as well.

11 *MR. HELFAND:* I appreciate that, Judge. Again, I  
12 don't think that this is that case. There aren't any real  
13 surprises. And, again, we share your desire to get it right.  
14 So if this makes the Court more comfortable that it will be  
10:45:42 15 right, I will say, I'll warn the Court now, that I'm going to  
16 use it as an opportunity to press you harder on the res  
17 judicata issue, but I'm sure you'll take that up when I present  
18 it.

19 *THE COURT:* Exactly. Now, with that being said,  
10:45:53 20 you -- I'll turn to what you inquired about, was a deadline.  
21 It's September the 2nd. When do you anticipate that these two  
22 witnesses can be presented and get a transcript back? When do  
23 you think? Do you think we can get it done by the end of the  
24 month?

10:46:18 25 *MR. HELFAND:* Oh, absolutely, Judge. I can present

10:46:19 1 them in the next 10 -- well, 14 days.

2           *THE COURT:* Okay. And then I think typically it  
3 takes, you know, without a rush job on the transcript, it takes  
4 a week or two. So, we're probably looking at one, two -- if  
10:46:40 5 you can get back the transcript by one, two, three -- the 30th.  
6 That's four weeks. That gives you some time, based upon your  
7 calendars, to schedule it and then assume that we can get the  
8 transcript back within a week or two.

9           How long after you get the transcripts,  
10:47:02 10 Mr. Poerschke, will you be in a position to -- or how long will  
11 it take you to file your amended response?

12           *MR. POERSCHKE:* I think two weeks will be appropriate,  
13 Your Honor.

14           *THE COURT:* Okay. So that's October the 14th. Your  
10:47:21 15 amended response will be due October the 14th.

16           Mr. Helfand, on your reply, it will be due -- is  
17 October the 23rd sufficient, which is a week and a couple of  
18 days afterwards?

19           *MR. HELFAND:* Speaking for Mr. Braun now, yes, Judge,  
10:47:53 20 we'll get it.

21           *THE COURT:* Okay.

22           *MR. HELFAND:* Easy for me.

23           *THE COURT:* Easy for you. Okay.

24           *MR. BRAUN:* We can do it by the 23rd, Your Honor.

10:48:02 25           *THE COURT:* October the 23rd. So the amended response

1 will come in October the 14th -- no later than October the 14th  
2 and the reply will come in no later than October the 23rd,  
3 which will be -- and at that point it's on the Court's desk and  
4 the Court will be able to deal with it.

5 All right. Gentlemen, having heard the Court's  
6 rulings on this, on these issues and the revised deadlines,  
7 Mr. Poerschke, any additional items for the Court this morning?

8 *MR. POERSCHKE:* No, Your Honor.

9 *THE COURT:* All right. Counsel for the defense,  
10 Mr. Helfand, any additional items for the Court this morning?

11 *MR. HELFAND:* No, Judge. But thank you for letting us  
12 talk this through with you. I think that that was very  
13 helpful.

14 *THE COURT:* Well, thank you, counsel. And obviously,  
15 you know, this is normally done in the courtroom, but in the  
16 middle of this pandemic everyone is adapting to this new world  
17 that we're in and I appreciate your professionalism in coming  
18 to the Zoom hearing. I hope that your families and your staff  
19 are safe. I looked forward to seeing you guys back in the  
20 courtroom as soon as it's safe to do so. But in the meanwhile,  
21 by all means make sure your families and staff remain safe.  
22 With that being said, thank you, gentlemen, and you are  
23 excused. The hearing is adjourned.

24 *MR. HELFAND:* Thank you, Judge. Same to you.

25 *MR. POERSCHKE:* Your Honor, thank you for your time

10:49:29 1 today in holding this hearing. I appreciate it very much, from  
2 the plaintiff.

3 *THE COURT:* Thank you, sir.

4 *MR. POERSCHKE:* All right. Bye-bye.

10:49:34 5 (*Concluded at 10:49 a.m.*)

6 \* \* \*

7 I certify that the foregoing is a correct transcript from the  
8 record of proceedings in the above-entitled cause, to the best  
9 of my ability.

10  
11 /s/ *Kathy L. Metzger*  
12 Kathy L. Metzger  
Official Court Reporter

*9-23-2020*  
Date